UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 07 2006

REPLY TO THE ATTENTION OF:
Behr VOC Plume Site

FEDERAL EXPRESS

Shawn R. DeMerse, JD, CHMM
Environmental Counsel
Office Of The General Counsel
DaimlerChrysler Corporation
CIMS 485-13-62
1000 Chrysler Drive
Auburn Hills, MI 48326-2766

Re: Behr VOC Plume Site
Dayton, Montgomery County, Ohio

Dear Mr. DeMerse:

Enclosed please find two copies of an Administrative Settlement Agreement and Order by Consent prepared by the U.S. Environmental Protection Agency ("U.S. EPA") under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9606. Please return both executed copies of the consent order within 5 calendar days after receipt of this letter to Maria Gonzalez, Associate Regional Counsel, C-14J, 77 West Jackson Boulevard, Chicago, Illinois 60604. Your failure to return two executed copies of the consent order to U.S. EPA within that time period will be construed as an unwillingness to enter a consent order with U.S. EPA. U.S. EPA will then proceed accordingly.

If you have any questions regarding the Order, feel free to contact Maria Gonzalez Associate Regional Counsel, at (312) 886-6630 or Steve Renninger, On-Scene Coordinator, at (513) 569-7539.

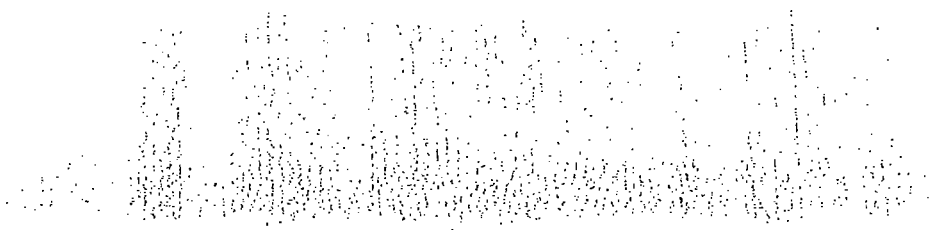
Sincerely yours,

William Bolen, Chief
Emergency Response Branch #1

Enclosures

cc: Jon S. Faletto
Hinshaw & Colbertson LLP

Ms. Cindy Hafner, Chief
Division of Emergency & Remedial Response
Ohio Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Behr VOC Plume Site
Dayton, Montgomery County, Ohio

Respondent:

Daimler Chrysler Corporation

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

Docket No. _____

Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and Daimler Chrysler Corporation ("DCC"), hereinafter the Respondent. This Settlement Agreement provides for the performance of removal actions by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the property located in the vicinity of 1600 Webster Street in Dayton, Montgomery County, Ohio, the "Behr VOC Plume Site," the "BVP Site" or the "Site." The Site is described further in Section III, Paragraph 8(j) of this Settlement Agreement.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"). This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

3. U.S. EPA has notified the State of Ohio (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. U.S. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings Of Fact) and V (Conclusions Of Law And Determinations) of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that Respondent will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon U.S. EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibilities under this Settlement Agreement.

6. Respondent is jointly and severally liable for carrying out all activities required by this Settlement Agreement.

7. Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Settlement Agreement. Respondent shall be responsible for any

noncompliance with this Settlement Agreement except noncompliance by U.S. EPA, U.S. EPA contractors, the Ohio Environmental Protection Agency (Ohio EPA), or Ohio EPA's contractors.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX (Effective Date).

c. "Response Costs" shall mean all costs, including direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement on or after the Effective Date. Response Costs shall also include all costs, including direct and indirect costs, that the United States incurred at or in connection with the Site during the period beginning on September 25, 2006 and ending on the Effective Date.

d. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

e. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

f. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX (Severability/Integration/Attachments)). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

g. "Parties" shall mean U.S. EPA and Respondent.

h. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

i. "Respondent" shall mean Daimler Chrysler, a Delaware Corporation.

j. "Site" shall mean the Behr VOC Plume Superfund Site, encompassing the areal extent of the undefined groundwater contamination plume originating from the Behr-Dayton Thermal Systems LLC facility (the Behr-Dayton facility) located at 1600 Webster Street, Dayton, Montgomery County, Ohio, and a residential area south of the Behr-Dayton facility, including but not limited to Daniel Street, Lamar Street, and Milburn Avenue and depicted generally on the map attached as Attachment B.

k. "State" shall mean the State of Ohio.

l. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

m. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and/or 4) any "hazardous waste" under Ohio Revised Code Chapter 3734.01(j).

n. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

9. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

a. The Behr-Dayton facility is located at 1600 Webster Street, Dayton, Montgomery County, Ohio, near a residential area, and approximately 1 mile north of the Downtown Dayton.

b. Behr-Dayton Thermal Systems LLC is a Delaware limited liability company which currently owns and operates the Behr-Dayton facility.

c. Behr Dayton Thermal Systems LLC manufactures vehicle air conditioning and engine cooling systems at the facility.

d. Respondent Daimler Chrysler Corporation ("DCC") is a Delaware corporation that owned and operated the Behr-Dayton facility from at least 1937 until April of 2002.

e. Respondent DCC manufactured air conditioning equipment at the Behr-Dayton facility.

f. During Respondent's ownership of the Behr-Dayton facility, hazardous substances, including trichloroethene (TCE), were released at and from the Behr-Dayton facility.

g. The groundwater beneath the Behr-Dayton facility is contaminated with volatile organic compounds, including trichloroethene (TCE).

h. TCE is a hazardous substance within the meaning of Section 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It is a "listed hazardous substance" as that term is defined at 40 CFR § 302.4, and is included in Table 302.4 as a hazardous substance designated under Section 102(a) of CERCLA.

i. TCE is a man-made chemical that is widely used as a cleaner to remove grease from metal parts.

j. The Agency for Toxic Substances and Disease Registry ("ATSDR") reports that inhalation exposure to TCE at very high concentrations may affect the central nervous system, with symptoms such as dizziness, headaches, confusion, euphoria, facial numbness, and weakness.

k. ATSDR and the Ohio Department of Health ("ODH") have established TCE screening and action levels for residential and commercial sub-slab and indoor air. The ATSDR residential indoor air screening level is 0.4 parts per billion (ppb) and the action level is 100 ppb. The ATSDR residential sub-slab screening level is 4 ppb and the action level is 1,000 ppb. The ATSDR commercial sub-slab screening level is 17 ppb. The ATSDR commercial indoor air screening level is 1.7 ppb. The U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA") has established an employee exposure limit of 100 parts per million (ppm) (8-hour time weighted average), with an acceptable ceiling concentration of 200 ppm and an acceptable maximum peak concentration of 300 ppm above the acceptable ceiling level concentration for an 8-hour shift, with a maximum duration of 5 minutes in any 2 hours. (See 29 CFR 1910.1000 Table Z-2.)

l. Respondent contracted Earth Tech to design, install, and operate two systems for the remediation of soil and groundwater contamination under the Behr-Dayton facility, with TCE as the main contaminant of concern. Earth Tech installed a Soil Vapor Extraction (SVE) system on the Behr-Dayton facility property for soil remediation and began operation in October 2003. The system was operated through December 2005. Based on the extracted air concentrations, the SVE system removed a total of 900 pounds of VOCs.

m. Earth Tech installed a groundwater remediation system on the Behr-Dayton facility property and began operation in June 2004. Through December 2005, the groundwater system had removed a total of 1031 pounds of VOCs, and dechlorinated 325 pounds of VOCs.

n. The TCE contaminated ground water has migrated to the South to a residential area located across Leo Street from the Behr-Dayton facility, including but not limited to Daniel Street, Lamar Street, and Milburn Avenue.

o. Earth Tech has conducted quarterly monitoring on a network of 75 on-site and off-site groundwater monitoring wells since 2001. In 2003, the following monitoring wells were

sampled and contained elevated levels of TCE: MW010s (17,000 ppb), MW028s (9,600 ppb), and MW029s (16,000 ppb). These monitoring wells are located along the southern perimeter of the Behr-Dayton facility (MW010s) or in the adjacent neighborhood (MW028s and MW029s).

p. On September 28, 2006, Earth Tech submitted the most recent quarterly groundwater sampling results to Ohio EPA. In the report, Earth Tech stated that one shallow groundwater monitoring well, MW038s, which is located at the intersection of Daniel Street and Lamar Street (residential area south of Behr Dayton facility), contained a TCE concentration of 3,900 ppb.

q. The Maximum Contaminant Level (MCL) for TCE is 5 ppb.

r. Groundwater in the area of the Behr-Dayton facility is located approximately 20 feet below ground surface.

s. On October 16, 2006, Ohio EPA installed a total of seven soil gas probes along Daniel Street, Lamar Street and Milburn Avenue to evaluate potential risk posed by vapor intrusion from a VOC groundwater plume. The depth of the soil gas probes were approximately one to two feet above the depth of groundwater, which was determined to be approximately 20 feet below ground surface. Once the soil probes were installed, an air sample was collected and analyzed for VOCs using EPA Method TO-14 modified.

t. Ohio EPA soil gas analytical results detected TCE concentrations at the following levels:

Sample ID	SG-1	SG-2	SG-3	SG-4	SG-5	SG-6	SG-7
TCE (ppb)	120,000	70,000	160,000	140,000	13,000	16,000	12,000

u. At the request of the Ohio EPA, the U.S. EPA conducted a simultaneous vapor intrusion investigation. In October and November 2006, the U.S. EPA collected sub-slab air samples from eight residences located south of the Behr-Dayton facility along Milburn Avenue, Daniel Street and Leo Street. TCE concentrations were detected at the following levels:

Sample ID	EPA-01-55	EPA-01-552	EPA-02-55	EPA-03-55	EPA-01-55*	EPA-05-55	EPA-06-55	EPA-07-55
TCE (ppb)	14,000	6,980	18,000	16,000	260	62,000	3,700	62,000

v. The results of the sub-slab testing indicates that eight samples exceed the ATSDR residential TCE sub-slab screening level of 4 parts per billion by volume (ppbv) and four samples exceed the ATSDR residential TCE sub-slab immediate action level of 1,000 ppbv.

w. Based on ATSDR and Ohio Department of Health ("ODH") recommendations, the U.S. EPA followed sub-slab air sampling with indoor air sampling at eight locations in November 2006. TCE concentrations were detected at the following levels:

Sample ID	EPA-01-1A	EPA-02-1A	EPA-03-1A	EPA-04-1A	EPA-05-1A	EPA-06-1A	EPA-07-1A	EPA-08-1A
TCE (ppb)	1.2	180	130	13	260	7.5	0.4	49

The results of the indoor air sampling indicate that eight samples exceed the ATSDR residential

TCE indoor air screening level of 0.4 ppbv and three samples exceed the ATSDR residential TCE indoor air immediate action level of 100 ppbv.

x. In a letter dated November 6, 2006, the Ohio EPA formally requested U.S. EPA assistance in conducting a time-critical removal action at the BVP Site. Ohio EPA made the following reference as the basis for its referral letter:

> "TCE concentrations in soil gas were as high as 160,000 ppbv. U.S. EPA sub-slab samples collected from October 11 to October 23 contained TCE at concentrations up to 62,000 ppbv. TCE concentrations in ground water samples collected by DaimlerChrysler in March 2006 were as high as 3,900 ppb beneath the residential area."

y. On November 7, 2006, U.S. EPA issued a general notice of potential liability under CERCLA to Behr-Dayton Thermal Systems LLC and DCC, revealing concerns about conditions at the Site. The general notice sought a commitment to perform the removal and reimburse U.S. EPA its costs incurred in connection with the Site.

z. Respondent DCC responded by letter dated November 20, 2006, indicating its commitment to address conditions at the Behr VOC Plume Site consistent with applicable law and regulation, and that it is willing to enter into an appropriate AOC that will delineate the scope of its responsibilities with respect to performing response actions at the Site and for reimbursement of necessary response costs incurred consistent with the National Contingency Plan.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, U.S. EPA has determined that:

a. The Behr VOC Plume Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

> i. Respondent Daimler-Chrysler is the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section

101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2); and/or persons who arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3); and/or persons who accept or accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

ii. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C.§§ 9601(22) and 9601(8).

e. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR §300.415(b)(2). These factors include, but are not limited to, the following:

i. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants. This factor is present at the Site due to the existence of TCE in the groundwater beneath residences south of the Behr-Dayton facility, and the migration of TCE vapors into residential homes

Vapor intrusion occurs when vapors produced by a chemical spill or groundwater contamination plume migrate through soil into the foundations of structures and into the indoor air. When chemicals are spilled on the ground, they will seep into the soil and make their way into the groundwater. VOCs, including TCE, produce vapors that travel through soil. These vapors can enter a home through cracks in the foundation or into a basement with a dirt floor or concrete slab.

TCE is a hazardous substance within the meaning of Section 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) because it is listed at 40 CFR Section 302.4. Historical groundwater sampling, Ohio EPA soil gas sampling, and U.S. EPA sub-slab and indoor air sampling results indicate that TCE vapors have migrated into residential homes at levels that have been determined by ATSDR and ODH to require action to protect human health.

The Agency for Toxic Substances and Disease Registry ("ATSDR") reports that inhalation exposure to TCE at very high concentrations may affect the central nervous system, with symptoms such as dizziness, headaches, confusion, euphoria, facial numbness, and weakness.

U.S. EPA has documented eight residences exceed the ATSDR TCE sub-slab

screening level of 4 ppbv and four residences exceed the ATSDR TCE sub-slab immediate action level of 1,000 ppbv. Sub-slab levels were documented as high as 62,000 ppbv. In addition, U.S. EPA has documented eight residences exceed the ATSDR TCE indoor air screening level of 0.4 ppbv and three residences exceed the ATSDR TCE indoor air immediate action level of 100 ppbv.

ii. **The unavailability of other appropriate federal or state response mechanisms to respond to the release.** This factor supports the actions required by this Settlement Agreement at the Site because Ohio EPA requested U.S. EPA Region 5 assistance with conducting a time-critical removal action at the Site, and the State of Ohio and local agencies do not have the funds to undertake the removal action at this Site.

f. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

11. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

12. Respondent may retain one or more contractors to perform the Work and shall notify U.S. EPA of the name(s) and qualifications of such contractor(s) within 5 business days of the Effective Date. Respondent shall also notify U.S. EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 business days prior to commencement of such Work. U.S. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If U.S. EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

13. Respondent has designated a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to U.S. EPA the designated Project Coordinator's qualifications. The designated Project Coordinator's name, address and telephone number are set forth below. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

Gregory M. Rose, Senior Manager
Environmental Risk Management
Daimler Chrysler Corporation
800 Chrysler Drive
Auburn Hills, MI 48/326-2757
(248) 576-7362
Gmr4@Daimler.Chrysler.com

14. U.S. EPA has designated Steve Renninger of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at the following address:

Steve Renninger, On-Scene Coordinator
U.S. EPA Region V
Emergency Response Branch
26 West Martin Luther King Drive (G41)
Cincinnati, OH 45268

Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies.

15. U.S. EPA and Respondent shall have the right, subject to Paragraphs 13 and 14, to change their respective designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

16. Respondent shall perform, at a minimum, the following removal activities:

a. Develop and implement a Site Health and Safety Plan, including an Emergency Contingency Plan.

b. Conduct subsurface gas extent of contamination sampling at the Site utilizing groundwater, soil gas, sub-slab, and/or indoor air sampling techniques.

c. If the applicable Indoor Air Screening Level for TCE is exceeded, design and install interior TCE vapor abatement systems in structures impacted by TCE subsurface migration to meet the applicable indoor air screening level. Abatement systems may include installation of a sub-slab vapor removal system or crawl space vapor removal system, sealing cracks in walls and floors of the basement, and/or sealing or fixing

drains that could be a pathway. The applicable screening levels, as set forth in paragraph 9.k, are: 1) for residential properties, the ATSDR residential indoor air screening level; 2) for commercial properties, the ATSDR commercial indoor air screening level; 3) for industrial properties, the OSHA employee exposure limits. If a property has mixed use, the more stringent standard applies.

d. Develop and implement a vapor abatement system performance sample plan to confirm that applicable indoor air screening levels are achieved for TCE following installation of the TCE vapor abatement systems. Work will not be completed at any structure until quarterly monitoring (4 continuous quarters) for sub-slab and indoor air is documented less than the applicable screening levels following termination of the installed TCE vapor abatement system operation. The OSC, in his discretion, will determine when the operation of any TCE vapor abatement system can be terminated.

17. Work Plan and Implementation.

a. Within 3 business days after the Effective Date, Respondent shall submit to U.S. EPA for approval a draft Phase I Work Plan for performing the removal actions described in Paragraph 16.a., c., and d. above for those locations already found to have exceeded the ATSDR Indoor Air Screening Level for TCE. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. Within 45 calendar days after the Effective Date, Respondent shall submit to U.S. EPA for approval a draft Phase II Work Plan for performing the removal action generally described in Paragraph 16 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

c. U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If U.S. EPA requires revisions, Respondent shall submit a revised draft Work Plan within 5 business days of receipt of U.S. EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

d. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written U.S. EPA approval pursuant to Paragraph 17(b).

18. Health and Safety Plan. Within 3 business days after the Effective Date, Respondent shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29

C.F.R. Part 1910. The plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA and shall implement the plan during the pendency of the removal action.

19. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for QA monitoring. Respondent shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity, unless shorter notice is agreed to by U.S. EPA. U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary. Upon request, U.S. EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

20. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by U.S. EPA, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(*l*) of the NCP and OSWER Directive No. 9360.2-02. Upon U.S. EPA approval, Respondent shall implement such controls and shall provide U.S. EPA with documentation of all post-removal site control arrangements.

21. Reporting.

a. Respondent shall submit a written progress report to U.S. EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of

U.S. EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit 3 copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by U.S. EPA, Respondent shall submit such documents in electronic form.

22. Final Report. Within 60 calendar days after completion of all Work required by Section VIII (Work To Be Performed) of this Settlement Agreement, Respondent shall submit to U.S. EPA's OSC for review a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with the guidance set forth in "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

> "Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

23. Off-Site Shipments.

a. For work at the Site authorized under this Settlement Agreement, Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2)

the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 23(a) and 23(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from work conducted at the Site authorized under this Settlement Agreement to an off-site location, Respondent shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence for work at the Site authorized under this Settlement Agreement.

IX. SITE ACCESS

24. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements 10 calendar days after the date the OSC determines that access to a particular property is necessary, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

25. Notwithstanding any provision of this Settlement Agreement, U.S. EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

26. Respondent shall provide to U.S. EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the work under this Settlement Agreement at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests,

trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to U.S. EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work required by this Settlement Agreement.

27. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, or if U.S. EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

28. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege, the attorney work-product privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, they shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

29. No claim of confidentiality shall be made with respect to any data created or generated pursuant to the requirements of this Settlement Agreement, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

30. Until 6 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents created or generated pursuant to the requirements of this Settlement Agreement (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 6 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work pursuant to this Settlement Agreement.

31. At the conclusion of this document retention period, Respondent shall notify U.S. EPA at least 60 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA, Respondent shall deliver any such records or documents to U.S. EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege, attorney work product privilege, or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information the creation or development of which is required by this Settlement Agreement shall be withheld on the grounds that they are privileged.

32. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by U.S. EPA or the State or the filing of suit against it regarding the Site and that it has fully complied and will fully comply with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

33. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to U.S. EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

34. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and U.S. EPA

takes such action instead, Respondent shall reimburse U.S. EPA all costs of the response action consistent with the NCP pursuant to Section XV (Payment of Response Costs).

35. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at (312) 353-2318 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

36. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

37. Section 107(d)(1) of CERCLA, 42 U.S.C. § 9607(d)(1), provides: "Except as provided in paragraph (2), no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person."

XV. PAYMENT OF RESPONSE COSTS

38. Payments for Response Costs.

a. Respondent shall pay U.S. EPA all Response Costs consistent with the NCP. On a periodic basis, U.S. EPA will send Respondent a bill requiring payment that consists of an Itemized Cost Summary. Respondent shall make all payments within 60 calendar days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 40 of this Settlement Agreement according to the following procedures:

i. If the payment amount demanded in the bill is for $10,000 or greater, payment shall be made to U.S. EPA by EFT in accordance with current Electronic Funds Transfer ("EFT") procedures to be provided to Respondent by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number B5FH,

and, if any, the U.S. EPA docket number for this action. Respondent shall: 1) complete Respondent's required bank form; 2) include Mellon Bank, ABA #021030004 on the bank form; 3) include the U.S. EPA Account #68010727on the form; 4) include "D 68010727 Environmental Protection Agency" in Field Tag 4200 of the Fedwire message; and 5) include the statement identifying the name and address of the party(ies) making payment, the Site name, the U.S. EPA Region and Site/Spill ID Number.

ii. If the amount demanded in the bill is $10,000 or less, the Settling Respondent may, in lieu of the procedures in subparagraph 38(a)(i), make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund", referencing the name and address of the party making the payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number B5FH, and, if any, the U.S. EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 371531
Pittsburgh, Pennsylvania 15251-7531

b. At the time of payment, Respondent shall send notice that payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Maria Gonzalez, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590.

c. The total amount to be paid by Respondent pursuant to Paragraph 38(a) shall be deposited in the Behr VOC Plume Site Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

39. In the event that the payment for Response Costs is not made within 60 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII (Stipulated Penalties).

40. Respondent may dispute all or part of a bill for Response Costs submitted under this Settlement Agreement, only if Respondent alleges that U.S. EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to U.S. EPA as specified in Paragraph 38 on or before the due date. Within the same time

period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 38(b) above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

42. If Respondent objects to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Response Costs, it shall notify U.S. EPA in writing of its objection(s) within 10 calendar days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which such party relies. U.S. EPA shall provide its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding Paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement.

43. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

44. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to

complete the Work or increased cost of performance.

45. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify U.S. EPA orally within 24 hours of when Respondent first knew that the event might cause a delay. Within 7 calendar days thereafter, Respondent shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall be grounds for U.S. EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

46. If U.S. EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Respondent in writing of its decision. If U.S. EPA agrees that the delay is attributable to a *force majeure* event, U.S. EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

47. Respondent shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 48 and 49 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of this Settlement Agreement within the specified time schedules established by and approved under this Settlement Agreement.

48. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 48(b) not excused under Section XVII (Force Majeure):

Penalty Per Violation Per Day	Period of Noncompliance
$2,000	1st through 14th day
$5,000	15th through 30th day
$10,000	31st day and beyond

b. Compliance Milestones

Designation of Respondent's Contractor
Designation of Respondent's Project Coordinator
Submission of Health and Safety Plan
Submission of Emergency Contingency Plan
Submission of QAPP
Submission of Work Plan(s)
Initiation of Work
Completion of Post-Removal Site Controls

49. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 17-22 unless excused under Section XVII (Force Majeure):

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th day
$1,000	15th through 30th day
$5,000	31st day and beyond

50. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 42 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after U.S. EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

51. Following U.S. EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Respondent written notification of the failure and describe the noncompliance. U.S. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified Respondent of a violation.

52. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondent's receipt from U.S. EPA of a written demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI

(Dispute Resolution). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check(s) made payable to "U.S. EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Region 5, Program Accounting & Analysis Section, P.O. Box 371531, Pittsburgh, Pennsylvania 15251-7531, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Site/Spill ID Number B5FH, the U.S. EPA Docket Number, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to U.S. EPA as provided in Paragraph 38(b).

53. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

54. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 20 days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

55. If Respondent fails to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of written demand made pursuant to Paragraph 51. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Should Respondent violate this Settlement Agreement or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. §9606. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY U.S. EPA

56. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but

not limited to, payment of Response Costs pursuant to Section XV (Payment of Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY U.S. EPA

57. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

58. The covenant not to sue set forth in Section XIX (Covenant Not to Sue by U.S. EPA) above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XXI. COVENANT NOT TO SUE BY RESPONDENT

59. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Ohio Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 58 (b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

60. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

61. By issuance of this Settlement Agreement, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

62. Except as expressly provided in Section XXI (Covenant Not to Sue by Respondent), and Section XX (Covenant Not to Sue by U.S. EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

63. No action or decision by U.S. EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

64. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42. U.S.C. § 9613(f)(3)(B), pursuant to which the Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Response Costs.

c. Except as provided in Section XXI(Covenant Not To Sue By Respondent), nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Section 113(f)(2)and (3), 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action, and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

XXIV. INDEMNIFICATION

65. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States not inconsistent with the National Contingency Plan, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States. The Federal Tort Claims Act (28 U.S.C. §§ 2671, 2680) provides coverage for injury or loss of property, or injury or death caused by the negligent or wrongful act or omission of an employee of U.S. EPA while acting within the scope of his or her employment, under circumstances where U.S. EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

66. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

67. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. MODIFICATIONS

68. The OSC may make modifications to any plan or schedule in writing or by oral direction not inconsistent with the National Contingency Plan. Any oral modification will be memorialized in writing by U.S. EPA promptly, but shall have as its effective date the date that the OSC communicates his/her direction to Respondent. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

69. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 68.

70. No informal advice, guidance, suggestion, or comment by the OSC or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVI. NOTICE OF COMPLETION OF WORK

71. When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including, *e.g.*, post-removal site controls, payment of Response Costs, and record retention, U.S. EPA will provide written notice to Respondent. If U.S. EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA

notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVII. FINANCIAL ASSURANCE

72. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security in the amount of $ 450,000 in one or more of the following forms:

a. A surety bond guaranteeing performance of the Work;

b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;

c. A trust fund;

d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Respondent; or

e. A demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f). {NOTE: For these purposes, references in 40 C.F.R. § 264.143(f) to the "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates" shall mean the amount of financial security specified above. If any Respondent who seeks to provide a demonstration under 40 C.F.R. § 264.143(f) has provided a similar demonstration at other RCRA or CERCLA sites, the amount for which they are providing financial assurance at those other sites should generally be added to the estimated costs of the Work for this Paragraph.}

73. If Respondent seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 72(a) of this Section, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Respondent seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 72(d) or (e) of this Section, it shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date. In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within 30 days of receipt of written notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed in Paragraph 72 of this Section. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

74. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 72 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the

estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to U.S. EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by U.S. EPA. In the event of a dispute, Respondent may reduce the amount of the security in accordance with the written decision resolving the dispute.

75. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and approval by U.S. EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVIII. INSURANCE

76. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of ten million dollars, combined single limit. Within the same time period, Respondent shall provide U.S. EPA with certificates of such insurance and a copy of each insurance policy. In lieu of securing the specified insurance, Respondent may demonstrate that it is self-insured and has assets sufficient to address any liability for which such insurance was required. If Respondent elects to make such a demonstration then, each year within 90 days after the end of Respondent's fiscal year, Respondent shall submit to the United States (a) its annual financial statements (audited in accordance with U.S. Generally Accepted Accounting Principles) demonstrating that Respondent has 1) a net worth of not less than U.S. $2,000,000,000; 2) working capital of not less than U.S. $1,000,000,000; and 3) a debt to equity ratio of not more than 4.0; and (b) a letter signed by Respondent's chief financial officer (or other responsible corporate financial officer) confirming that Respondent satisfies the criteria set forth in items (1) through (3) above for its most recent completed fiscal year. If at any time after electing to make the demonstration set forth in the immediately preceding sentence Respondent fails to satisfy the criteria set forth in items (1) through (3) above, Respondent shall immediately notify EPA of such failure and shall promptly (and in any event within 90 days) secure the specified third-party insurance. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor or demonstrate sufficient financial assets under the self-insurance program, as discussed above.

XXIX. SEVERABILITY/INTEGRATION/ATTACHMENTS

77. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

78. This Settlement Agreement and its attachments constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following attachments are incorporated into this Settlement Agreement: Attachment A (Map of Site).

XXX. EFFECTIVE DATE

79. This Settlement Agreement shall be effective upon receipt by Respondent of a copy of this Settlement Agreement signed by the Director, Superfund Division, U.S. EPA Region 5.

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party they represent to this document.

Agreed this ____ day of _____, 2006.

For Respondent

By

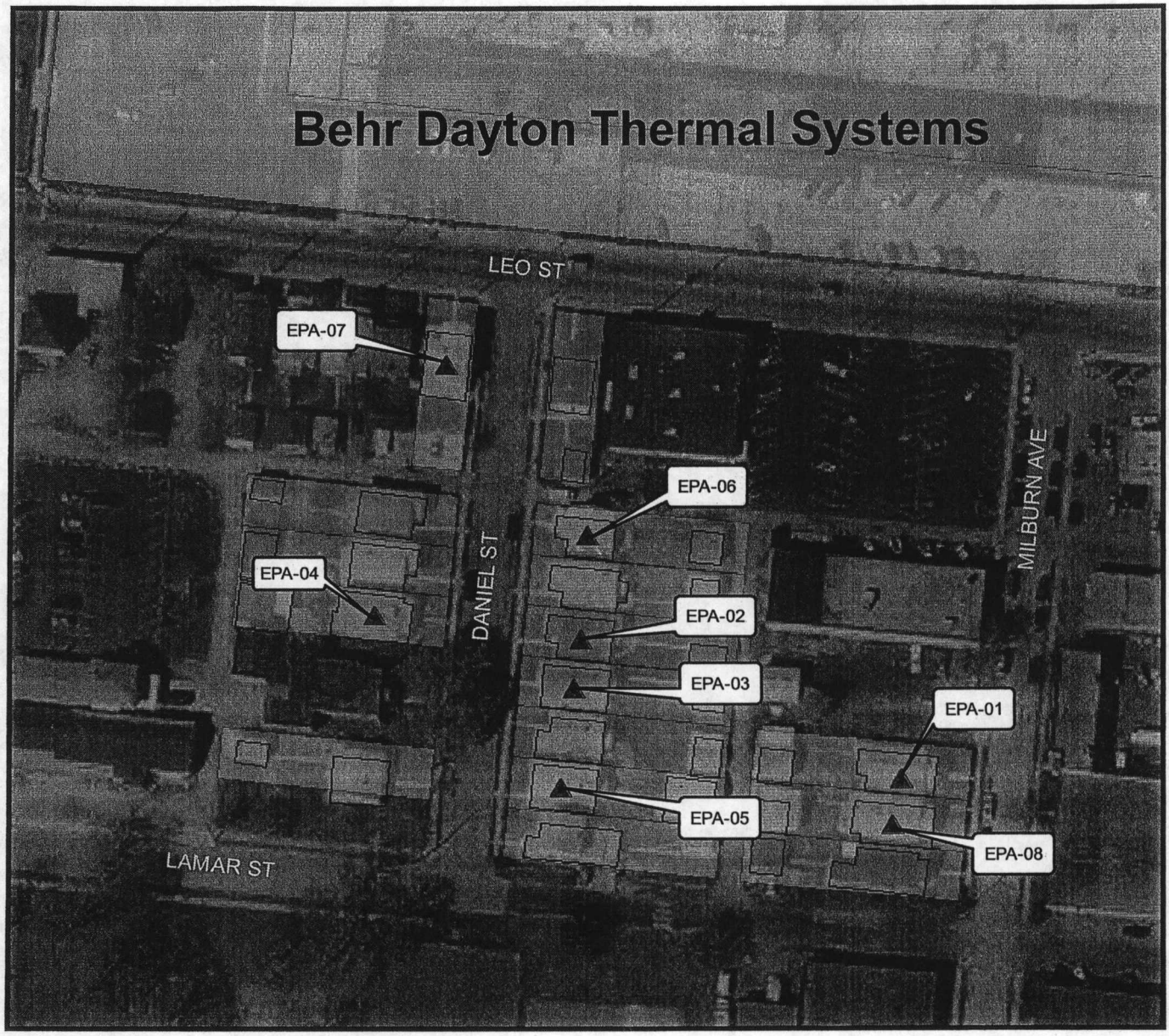
Title _____

IN THE MATTER OF:

BEHR VOC PLUME SITE
DAYTON, OHIO

It is so ORDERED and Agreed this _____ day of _____, 2006.

BY: _____
Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5



N
W E
S

0 125 250 Feet

▲ Indoor Air Result Above 0.4 ppb

Sampling Area Parcel

Behr Dayton Thermal Systems

US EPA Region 5

Prepared by:

Weston Solutions, Inc.

Figure 3

Indoor Air Sample Results
Behr VOC Plume Site
Dayton, Montgomery County, Ohio
20 November 2006